

**Hawaii Revised Statute (HRS)  
Authoring Creation of the Board and Fund**

*from: [http://www.capitol.hawaii.gov/hrscurrent/vol03\\_ch0121-0200d/hrs0138/hrs\\_0138-.htm](http://www.capitol.hawaii.gov/hrscurrent/vol03_ch0121-0200d/hrs0138/hrs_0138-.htm)*

**[CHAPTER 138]**

**ENHANCED 911 SERVICES FOR MOBILE PHONES**

Section

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## **[\\$138-1] Definitions.**

As used in this chapter, unless the context requires otherwise:

"Automatic location identification" means a wireless enhanced 911 service capability that enables the automatic display of information indicating the approximate geographic location of the wireless telephone used to place a 911 call in accordance with the Federal Communications Commission order.

"Automatic number identification" means a wireless enhanced 911 service capability that enables the automatic display of the ten-digit wireless telephone number used to place a 911 call in accordance with the Federal Communications Commission order.

"Board" means the wireless enhanced 911 board established under this chapter.

"Commercial mobile radio service" means commercial mobile radio service under sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, P.L. 103-66, August 10, 1993, 107 Stat. 312.

"Commercial mobile radio service connection" means each active wireless telephone number assigned to a commercial mobile radio service customer, including end-users of resellers whose place of primary use is within the State.

"Federal Communications Commission order" means the original order issued in the Federal Communications Commission Docket No. 94-102 governing wireless enhanced 911 service and any other Federal Communication Commission orders related to the provision of wireless enhanced 911 service.

"Proprietary information" means customer lists and other related information (including the number of customers), technology descriptions, technical information, or trade secrets, and the actual or developmental costs of wireless enhanced 911 service that are developed, produced, or received internally by a wireless provider or by a provider's employees, directors, officers, or agents.

"Public safety agency" means a functional division of the State or county that provides or has authority to provide, or a private entity contracted by a state or county agency that

provides, firefighting, law enforcement, ambulance, medical, or other emergency services.

"Public safety answering point" means the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to those calls.

"Reseller" means a person or entity that purchases commercial mobile radio service from a wireless provider for the purpose of reselling commercial mobile radio service to end-users.

"Wireless enhanced 911 commercial mobile radio service costs" means all capital, nonrecurring, and recurring costs directly related to the implementation and operation of phase I or phase II wireless enhanced 911 services pursuant to the Federal Communications Commission order.

"Wireless enhanced 911 fund" or "fund" means the statewide special fund established to ensure adequate cost recovery for the deployment of phase I and phase II wireless enhanced 911 service in Hawaii.

"Wireless provider" means a person or entity that is authorized by the Federal Communications Commission to provide facilities-based commercial mobile radio service within the State. [L 2004, c 159, pt of §2]

**§138-2 Wireless enhanced 911 board.** (a) There is created within the department of accounting and general services, for administrative purposes, a wireless enhanced 911 board consisting of eleven voting members; provided that the membership shall consist of:

- (1) The comptroller or the comptroller's designee;
- (2) Three representatives from wireless providers, who shall be appointed by the governor as provided in section 26-34, except as otherwise provided by law;
- (3) One representative each from the public safety answering points for Oahu, Hawaii, Kauai, Maui, and Molokai, who shall be appointed by the governor, as provided in section 26-34, except as otherwise provided by law, from a list of five names submitted by each respective public safety answering point;

(4) The consumer advocate or the consumer advocate's designee; and

(5) One representative of the current wireline provider of enhanced 911.

(b) Six members either in person or by proxy, pursuant to subsection (g), shall constitute a quorum, whose affirmative vote shall be necessary for all actions by the board; provided that three of the six members constituting a quorum shall be representatives of the wireless providers and three shall be representatives of public safety answering points, except as provided in section 138-8(c).

(c) The chairperson of the board shall be elected by the members of the board by simple majority and shall serve a term of one year.

(d) The board shall meet upon the call of the chairperson, but not less than quarterly.

(e) The members representing wireless providers shall be appointed by the governor for terms of two years, except that terms of the two members initially appointed shall be for eighteen months.

(f) Each member shall hold office until the member's successor is appointed and qualified. Section 26-34 shall apply only insofar as it relates to succession, vacancies, and suspension of board members, and as provided in subsection (a).

(g) A member may vote by proxy submitted in writing to the board.

(h) The members shall serve without compensation. Members shall be entitled to reimbursements from the wireless enhanced 911 fund for reasonable traveling expenses incurred in connection with the performance of board duties.

(i) The board or its chairperson, with the approval of the board, may retain independent, third-party accounting firms, consultants, or other third party to:

(1) Create reports, make payments into the fund, process checks, and make distributions from the fund, as directed by the board and as allowed by this chapter; and

(2) Perform administrative duties necessary to administer the fund or oversee operations of the board, including providing technical advisory support.

(j) The board shall develop reasonable procedures to ensure that all wireless providers receive adequate notice of board meetings and information concerning board decisions. [L 2004, c 159, pt of §2; am L 2005, c 49, §1]

**[\$138-3] Wireless enhanced 911 fund.**

There is established outside the state treasury a special fund, to be known as the wireless enhanced 911 fund, to be administered by the board. The fund shall consist of amounts collected under section 138-4. Moneys paid into the fund are not general fund revenues of the State. The board shall place the funds in an interest-bearing account at any federally insured financial institution, separate and apart from the general fund of the State. Moneys in the fund shall be expended exclusively by the board for the purposes of ensuring adequate cost recovery for the deployment of phase I and phase II wireless enhanced 911 service and for expenses of administering the fund. [L 2004, c 159, pt of §2]

**[\$138-4] Surcharge.**

(a) A monthly wireless enhanced 911 surcharge, subject to this chapter, shall be imposed upon each commercial mobile radio service connection.

(b) The effective date of the surcharge shall be July 1, 2004. The rate of the surcharge shall be set at 66 cents per month for each commercial mobile radio service connection. The surcharge shall have uniform application and shall be imposed on each commercial mobile radio service connection operating within the State except:

(1) Connections billed to federal, state, and county government entities; and

(2) Prepaid connections.

(c) All wireless providers and resellers shall bill to and collect from each of their customers a monthly surcharge at the rate established for each commercial mobile radio service

connection. The wireless provider or reseller may list the surcharge as a separate line item on each bill. If a wireless provider or reseller receives a partial payment for a monthly bill from a commercial mobile radio service customer, the wireless provider or reseller shall apply the payment against the amount the customer owes the wireless provider or reseller, before applying the partial payment against the surcharge.

(d) A wireless provider that:

(1) Is collecting the surcharge and remitting appropriate portions of the surcharge to the fund pursuant to this chapter; and

(2) Has been requested by a public safety answering point to provide phase I or phase II wireless enhanced 911 service in a particular county or counties, may recover wireless enhanced 911 commercial mobile radio service costs as provided in this chapter.

(e) Each wireless provider or reseller may retain two per cent of the amount of surcharges collected to offset administrative expenses associated with billing and collecting the surcharge.

(f) A wireless provider or reseller shall remit to the wireless enhanced 911 fund, within sixty days after the end of the calendar month in which the surcharge is collected, an amount that represents the surcharges collected less amounts retained for administrative expenses incurred by the wireless provider or reseller, as provided in subsection (e).

(g) The surcharges collected by the wireless provider or reseller pursuant to this section shall not be subject to any tax, fee, or assessment, nor are they considered revenue of the provider or reseller.

(h) Each customer who is subject to this chapter shall be liable to the State for the surcharge until it has been paid to the wireless provider. Wireless providers shall have no liability to remit surcharges that have not been paid by customers. A wireless provider or reseller shall have no obligation to take any legal action to enforce the collection of the surcharge for which any customer is billed. However, the board may initiate a collection action against the customer. If the board prevails in such a collection action, reasonable attorney's fees and costs shall be awarded.

(i) At any time the members deem it necessary and appropriate, the board may meet to make recommendations to the legislature as to whether the surcharge and fund should be discontinued, continued as is, or amended.

(j) When considering whether to discontinue, continue as is, or amend the fund or surcharge, the board's recommendations shall be based on the latest available information concerning costs associated with providing wireless enhanced 911 service in accordance with the Federal Communications Commission order. [L 2004, c 159, pt of §2]

**[§138-5] Recovery from the fund.**

(a) After January 1, 2005, every public safety answering point shall be eligible to seek reimbursement from the fund solely to pay for the reasonable costs to lease, purchase, or maintain all necessary equipment, including computer hardware, software, and database provisioning, required by the public safety answering point to provide technical functionality for the wireless enhanced 911 service pursuant to the Federal Communications Commission order. All other expenses necessary to operate the public safety answering point, including but not limited to those expenses related to overhead, staffing, and other day-to-day operational expenses, shall continue to be paid through the general funding of the respective counties.

(b) After January 1, 2005, each wireless provider may request reimbursement from the fund of wireless enhanced 911 commercial mobile radio service costs incurred; provided that the costs:

(1) Are recoverable under section 138-4(d); and

(2) Have not already been reimbursed to the wireless provider from the fund.

In no event shall a wireless provider be reimbursed for any amount above its actual wireless enhanced 911 commercial mobile radio service costs allowed to be recovered under section 138-4(d).

(c) After the expenses of the board are paid, the public safety answering points shall be allocated two-thirds of the remaining balance of the fund. The remaining one-third shall be available for wireless provider cost recovery. The board shall determine the reimbursement amounts for the public safety answering

points, based on the limitations set forth in section 138-5(a). The reimbursement level for each wireless provider shall be limited:

(1) To the total contribution made by the wireless provider to the wireless provider cost recovery portion of the fund; and

(2) As provided in section 138-5(b). [L 2004, c 159, pt of §2]

**[\$138-6] Report to the legislature.**

The board shall submit an annual report to the legislature, including:

(1) The total aggregate surcharge collected by the State in the last fiscal year;

(2) The amount of disbursement from the fund;

(3) The recipient of each disbursement and a description of the project for which the money was disbursed;

(4) The conditions, if any, placed by the board on disbursements from the fund;

(5) The planned expenditures from the fund in the next fiscal year;

(6) The amount of any unexpended funds carried forward for the next fiscal year;

(7) A cost study to guide the legislature towards necessary adjustments to the fund and the monthly surcharge; and

(8) A progress report of jurisdictional readiness for wireless E911 services, including public safety answering points, wireless providers, and wireline providers. The report shall include the status of requirements outlined in the Federal Communications Commission Order 94-102 and subsequent supporting orders related to phase I and phase II wireless 911 services. [L 2004, c 159, pt of §2]



**[§138-7 Audits.]**

(a) During any period in which a wireless enhanced 911 surcharge is imposed upon customers, the board may request an audited report prepared by an independent certified public accountant that demonstrates that the request for cost recovery from public safety answering points and wireless providers recovers only costs and expenses directly related to the provision of phase I or phase II wireless enhanced 911 service as authorized by this chapter. The cost of the audited reports shall be considered expenses of the board. The board shall prevent public disclosure of proprietary information contained in the audited report, unless required by court order or appropriate administrative agency decision.

(b) The board shall select an independent third party to audit the fund every two years to determine whether the fund is being managed in accordance with this chapter. The board may use the audit to determine whether the amount of the surcharge assessed on each commercial mobile radio service connection is required to be adjusted. The costs of the audit shall be an administrative cost of the board recoverable from the fund. [L 2004, c 159, pt of §2]

**[§138-8] Proprietary information.**

(a) All proprietary information submitted to the board by any third party used by the board in connection with its duties or any public safety answering point in deploying wireless 911 service shall be retained in confidence. Proprietary information submitted pursuant to this chapter shall not be released to any person, other than to the submitting wireless provider or reseller, the board, or any independent, third-party accounting firm retained by the board, without the express permission of the submitting wireless provider or reseller. General information collected by the board shall be released or published only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual wireless provider.

(b) The board, any third parties it may retain, and any public safety answering point shall take appropriate measures to maintain the confidentiality of the proprietary information that may be submitted by a wireless provider. The board shall hold all propriety information in confidence and shall adopt

reasonable procedures to prevent disclosure or providing access to the proprietary information to the public and competitors, including members of the board representing other wireless providers. Members of the board shall not disclose the information to any third parties, including their employers, without the written consent of the wireless provider whose proprietary information is to be disclosed.

(c) A committee consisting of all board members, except the three wireless provider representatives, shall have the power to act for the board on the specific matters defined by the board, when at least two-thirds of the members of the board determine that a board action may be conducted by the committee to prevent disclosure of proprietary information to the wireless provider representatives. [L 2004, c 159, pt of §2]

**[§138-9] Limitation of liability.**

(a) Notwithstanding any law to the contrary, in no event shall any wireless provider, reseller, or their respective employees, directors, officers, assigns, affiliates, or agents, except in cases of gross negligence or wanton and wilful misconduct, be liable for any civil damages or criminal liability resulting from death or injury to a person or from damage to property incurred by any person in connection with any act or omission in developing, designing, adopting, establishing, installing, participating in, implementing, maintaining, or providing access to phase I or phase II wireless enhanced 911 or any other wireless service intended to help persons obtain emergency assistance. In addition, no wireless provider, reseller, or their respective employees, directors, officers, assigns, affiliates, or agents shall be liable for civil damages or criminal liability in connection with the release of customer information to any governmental entity, including any public safety answering point, as required under this chapter.

(b) In no event shall any public safety answering point, or its employees, assigns, or agents, or emergency response personnel, except in cases of gross negligence or wanton and wilful misconduct, be liable for any civil damages or criminal liability resulting from death or injury to the person or from damage to property incurred by any person in connection with any act or omission in the development, installation, maintenance, operation, or provision of phase I or phase II wireless enhanced 911 service. [L 2004, c 159, pt of §2]

**[§138-10] Database or location information.**

(a) Any commercial mobile radio service location information obtained by any public safety answering point or public safety agency or its personnel for public safety purposes is not a government record open to disclosure under chapter 92F.

(b) A person shall not disclose or use, for any purpose other than the wireless enhanced 911 calling system, information contained in the database of the wireless provider's network portion of the wireless enhanced 911 calling system established pursuant to this chapter, without the prior written consent of the wireless provider. [L 2004, c 159, pt of §2]

**[§138-11] Dispute resolution.**

(a) Any wireless provider, reseller, or public safety answering point aggrieved by a decision of the board shall have the right to petition the board for reconsideration within ten days following the rendering of the board's decision. As part of its petition for reconsideration, the aggrieved party may present any reasonable evidence or information for the board to consider. The board shall render its decision on the reconsideration petition as soon as reasonably possible, but no later than thirty days after the reconsideration request is made.

(b) An aggrieved party, following the completion of the reconsideration petition process, upon agreement of the other party, may have the dispute resolved through final and binding arbitration by a single arbitrator in accordance with the Wireless Industry Arbitration Rules of the American Arbitration Association. The costs of the arbitration, including the fees and expenses of the arbitrator, shall be borne by the nonprevailing party of any arbitration proceeding. The arbitrator's decision shall be final and binding and may be confirmed and enforced in any court of competent jurisdiction.

(c) Nothing in this section shall preclude any wireless provider, reseller, or public safety answering point from pursuing any existing right or remedy to which it is entitled in any court having jurisdiction thereof. [L 2004, c 159, pt of §2]

#### **[\$138-12] Service contracts.**

A wireless provider shall not be required to provide wireless enhanced 911 service until the wireless provider and the public safety answering point providing wireless enhanced 911 service in the county or counties in which the wireless provider is licensed to provide commercial mobile radio service have entered into a written agreement setting forth the basic terms of service to be provided. [L 2004, c 159, pt of §2]